

Board of Contract Appeals

General Services Administration
Washington, D.C. 20405

August 10, 2001

GSBCA 15538-RELO

In the Matter of JAKIE A. LOWERY

Jakie A. Lowery, Topeka, KS, Claimant.

Jeanette Hill, Chief, Finance Services Center, Travel Section, Department of Veterans Affairs, Austin, TX, appearing for Department of Veterans Affairs.

HYATT, Board Judge.

Claimant, Jakie A. Lowery, is an employee development specialist with the Department of Veterans Affairs (DVA). In December 2000, he accepted a permanent change of station, moving from the Bureau of Prisons in Aurora, Colorado, to DVA in Topeka, Kansas. Incident to this transfer he purchased a new home in Topeka and submitted a claim for reimbursement of real estate transaction fees. He has requested the Board's review of DVA's disallowance of a document preparation fee in the amount of \$375. We conclude that, based on the information available, the agency has properly disallowed the document preparation fee.

The paperwork submitted in support of claimant's request for reimbursement of real estate expenses reflects that both a one percent loan origination fee of \$1320 and a document preparation fee of \$375 were paid at settlement to Cendant Mortgage. No other explanation concerning the nature of this fee is presented. In view of this, DVA's Finance Services Center disallowed payment of the document preparation fee, explaining that the loan origination fee has already been reimbursed in the maximum amount generally allowed by law. This fee includes the cost to the lender of preparing documents required for closing on the loan. Mr. Lowery has not established that a higher rate should be reimbursed here.

Mr. Lowery, in reclaiming for the document preparation fee, contends that this fee covers searching title, and preparing an abstract, conveyances, other instruments, and the like. As such, he asserts that the fee should be characterized as "legal" or "attorney fees" and should be separately reimbursable under the regulations.

Discussion

When a federal agency transfers an employee from one official duty station to another, the agency shall reimburse the employee for expenses the employee is required to pay in connection with the purchase of a residence at the new official duty station. 5 U.S.C. § 5724a(d) (Supp. V 1999). This statutory provision is implemented in the Federal Travel Regulation (FTR). 41 CFR.302-6 (2000).

Claimant notes that section 302-6.2(c) of the FTR permits reimbursement of costs of title searches and costs of preparing abstracts, conveyances, other instruments, and contracts as legal and related expenses. He thus suggests that his "document preparation fees" should be reimbursable under the FTR and questions the VA's decision to deny his claim. Under the FTR these costs are specifically reimbursable under certain circumstances. These are, however, generally reflected at settlement as fees charged by a lawyer or title company, rather than by the lender. John P. Kemp, GSBCA 14335-RELO, 98-2 BCA ¶ 29,751. The document preparation fee claimed by Mr. Lowery was paid to the lender, not to an attorney or title company.

As such, we agree with DVA that Mr. Lowery is not entitled to be reimbursed for the document preparation fee. The regulations in effect when Mr. Lowery transferred allowed for reimbursement of a loan origination fee, which is a fee paid by a borrower "to compensate the lender for administrative type expenses incurred in originating and processing a loan." Reimbursement for a loan origination fee is limited to a maximum of one percent of the loan amount unless the employee shows by clear and convincing evidence that the higher rate (1) did not include prepaid interest, points, or a mortgage discount, and (2) was customarily charged in the locality where the residence was located. 41 CFR 302-6.2(d)(1)(n). The Board has previously explained that this fee includes the cost to the lender of preparing documents needed to close the loan, and that an employee who is reimbursed for the maximum allowable loan origination fee cannot also be reimbursed for a document preparation fee. Jeffrey P. Zippin, GSBCA 15115-RELO, 00-1 BCA ¶ 30,744; Joseph Thompson, GSBCA 15077-RELO, 00-1 BCA ¶ 30,615; Kemp. DVA has reimbursed Mr. Lowery for a one percent loan origination fee, and he has not established any circumstances justifying a higher rate. As such, Mr. Lowery is not entitled to be reimbursed for the additional document preparation fee.

CATHERINE B. HYATT
Board Judge